



April 17, 2000

Ms. Shari Tait
City of Shoreacres
601 Shoreacres Boulevard
Shoreacres, Texas 77571

OR2000-1504

Dear Ms. Tait:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 134276.

The City of Shoreacres (the "city") received a request for a copy of a letter written by Police Officer Rion. The requestor also asks two personal questions about Officer Rion. You claim that the requested information is excepted from disclosure under section 552.024 of the Government Code. We have considered the statute you raise.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request its written comments stating the reasons why the stated exceptions apply that would allow the governmental body to withhold the information, a copy of the written request for information, and a copy of the specific information requested. You did not comply with section 552.301(e) because you did not submit to this office within fifteen business days the city's written comments, the copy of the written request for information or a copy of the requested letter.¹

Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public

¹In calculating the fifteenth business day under section 552.301, this office excluded February 21, 2000 as a national holiday. The city does not indicate that it observed any other holiday in this time period. The city submitted the copy of the request for information and the letter from the Police Chief to the mayor and city council members by fax on February 28, 2000, the seventeenth business day after the date of its receipt of the request for information.

and must be released. Gov't Code §552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The applicability of a mandatory exception under the Act may provide a compelling reason to overcome the presumption of openness.²

Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.³ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. The city must withhold the home addresses, home telephone numbers and family information of its officers under section 552.117(2). Therefore, the city must withhold Officer Rion's home address and family information from disclosure under section 552.117(2). *See* Open Records Decision No. 532(1989).

However, as the city did not provide this office a copy of Officer Rion's letter for review, we cannot make a determination of the applicability of section 552.117(2) or any other mandatory exceptions under the Act to this information. Therefore, unless the information is confidential by section 552.117(2) or other law, the city must promptly release to the requestor a copy of Officer Rion's letter. Gov't Code §552.221; *see* Open Records Decision 664 (2000). We caution, however, that distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

²Mandatory exceptions are those which protect information deemed confidential by law and they cannot be waived by a governmental body.

³Section 552.024 provides the procedural mechanism for government officials and employees other than police officers to choose to keep certain personal information confidential.

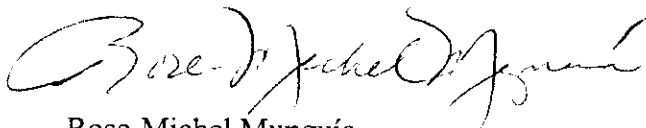
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM\ch

Ref: ID# 134276

Encl: Submitted documents

cc: Mr. Richard Herb
200 Southbrook
Shoreacres, Texas 77571
(w/o enclosures)